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To Lester | From Karen
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OPTIONAL FORM 99 (7-90)

September 30, 1997

Lester Snow, Executive Director
CALFED Bay-Delta Program
1416 Ninth Street, Room 1155
Sacramento, CA 95814

Dear Lester:

This letter responds to your request, made at the September 11 Management Team meeting, to convey any outstanding agency issues or concerns regarding the CALFED alternatives (the common programs, as well as the storage and conveyance configurations). Our letter summarizes comments we have made at the Program Coordination Team (PCT), Management Team, and Policy Group meetings, as well as in our written communications.

I appreciate the effort your staff has taken to respond to our comments thus far. We have recently received responses to our June 18 written comments on the "Phase II Alternatives Descriptions" document and to our July 31 written comments on the Proposed Decision Process. Some of our concerns have been addressed; others, we understand, will be better discussed as further analysis is done. This letter focuses on the major unresolved issues. We have made an attempt, where possible, to suggest specific changes.

Water Supply Reliability Analysis

In each alternative, we must fully analyze alternative water supply reliability options, in addition to new storage and conveyance facilities. Specifically, EPA continues to believe that significant increases in water supply reliability may be achieved through implementation of options which include water transfers, non-traditional supply such as water reclamation, and demand management measures, such as water conservation. Although we have recently begun a more detailed discussion of these issues with the Bay Delta Program staff, we are still unsure how CALFED will integrate water use efficiency into the alternatives to determine the degree that new storage and conveyance facilities are needed, if at all, to provide water supply reliability.

Further, we believe that the cost-effectiveness of alternative water supply and demand management techniques, such as water reclamation, water conservation, and

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water pricing, needs to be evaluated and compared as alternatives to new facilities. We believe this broader "integrated resources planning" approach will assure that CALFED's policies and investments for water supply reliability are most cost-effective. In addition, to the extent that water will be made available through implementation of other aspects of the common programs, e.g., from changing agricultural land use as part of the water quality program, we believe that these supplies must be factored into the water supply reliability evaluation. This type of analysis is necessary to help meet requirements of the National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act.

Water Use Efficiency Common Program

While we fully recognize the work that has been done to strengthen the Water Use Efficiency Common Program (WUE) over the last several months, we are still concerned that the WUE Common Program is inadequate both in terms of definition and in terms of its apparent substance. Thus far, the WUE Common Program has been written as a policy rather than as a program. In response to this concern, CALFED staff has committed (in Steve Yeager's August 12 memo to the PCT) to drafting an "implementation plan" for the technical, planning, and funding assistance programs proposed for the urban, agricultural, and water recycling components of the WUE Common Program. As we understand it, the implementation plan will include a baseline analysis of existing programs, and a plan for supplementing existing programs and the addition of any new programs. This may include an incentive program to implement management improvements which achieve multiple benefits (water quality, supply, and ecosystem restoration) but may not be cost effective at the local level. The implementation plan should also present some options to provide assurances that the agencies will actually fulfill funding and staffing commitments.

At this point, the nature of the implementation plan is still vague. We are not aware of any work that has been done to determine which state or federal programs need to be expanded or supplemented, or what the funding and staffing levels need to be to assure success. While we understand the desire not to go beyond the "programmatic" level of detail for the purposes of the Phase II DEIS, this Common Program is essential to the overall success of the CALFED effort and requires substantially greater detail for implementation. Therefore, we urge the staff to begin work on this implementation plan immediately. Without a detailed implementation plan, we will have difficulty determining the adequacy of the WUE Common Program to meet our objectives, which will, in turn, impair our evaluation of the overall alternatives.

Water markets as an efficiency mechanism. A fundamental assumption of the CALFED program is that water use efficiency will be encouraged by "the market." We agree that improving opportunities to engage in voluntary market transfers holds the potential of improving short and long-term reliability and encouraging efficiency, but we

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also note that California does not currently have a fully functional water market. We are encouraged that both the Bay Delta Advisory Council (BDAC) and the CALFED agencies have created subgroups to examine the issues involved in water transfers. We are hopeful that these processes will succeed in moving toward the realization of a more effective water market in the state and, at the same time, resolve the legitimate concerns about water transfers raised by counties of origin and others. At the same time, however, since these workgroups were formed relatively recently, they have not yet made significant visible progress in forging a consensus on CALFED water transfer policy. Absent such progress, and in light of the aggressive CALFED schedule, we believe that the Program staff needs to take a leadership role in articulating a CALFED water transfer policy that is consistent with the Program objectives.

Reliance on AB3616 MOU process for water use efficiency. As written, the agricultural component of the WUE Common Program is based almost entirely on ensuring that agencies participate in AB3616's MOU process to achieve agricultural water conservation and efficiency. While EPA recognizes the importance of the AB3616 process as a positive first step in improved water management in the state, we believe CALFED cannot ignore the inadequacies associated with that process. The qualified success of the AB3616 process is evidenced by the limited participation by the environmental community.

EPA believes that implementation of the AB3616 MOUs should serve as the starting point, not the end point of the CALFED WUE Common Program. The CALFED effort must identify and address shortcomings in the current program, and utilize the entire range of CALFED agency approaches to assure implementation of a broad and effective WUE Common Program. As a first step, we suggest that Program staff review the efficiency practices considered "optional" in the AB3616 MOU program (lists B and C), and evaluate whether some or all of those practices should be incorporated into the Bay Delta Program using either regulatory or incentive approaches.

Further, we understand that the Bay Delta Program has proposed using compliance with the AB3616 MOUs as a precondition of receiving CALFED benefits. Although this idea has some merit, it needs to be better defined to be an effective incentive tool. In particular, given that virtually all water users in the State will receive at least indirect benefits from the CALFED Bay Delta program, we believe that this incentive tool needs to be carefully crafted to discourage users from opting out of active participation in the WUE program.

Water reclamation as water use efficiency. We feel compelled to note the absence of a strong program component encouraging the use of water reclamation. Given that water reclamation has already generated several hundred thousand acre-feet of water for beneficial uses in the State, we believe that an aggressive water reclamation element must be part of the CALFED solution. Commitments toward water

reclamation should be included in the implementation plan referenced earlier, and water reclamation must be analyzed in the comparison of water supply options.

Water Pricing, Cost Allocation, and Sharing Benefits of New Supply

Water pricing and allocating costs of new facilities are two major policy issues not yet discussed by the Management Team or Policy Group. We are concerned that the current CALFED program assumptions on these issues are unnecessarily restrictive and do not reflect the full range of potential solutions.

The price of "CALFED water" has potential effects on demand for that water, and thereby affects the relative costs and benefits of other water management options such as water use efficiency measures or alternative sources of supply. CALFED staff have indicated that the pricing issues will be developed in the financing package, but that for purposes of impact analysis, the staff is assuming that pricing will "parallel existing Bureau and DWR mechanisms." We believe that this assumption will lead to an impact analysis that fails to account for the potential changes in demand associated with different pricing structures. Further, it does not reflect the significant latitude given the Finance and Assurances groups in tailoring innovative solutions to meet CALFED's objectives. We recommend that the impact analysis evaluate a range of cost allocation formulae, so that decision makers will have a better sense of the comparative costs of new facilities.

We question the use of a "1/3-1/3-1/3" ag-urban-environmental allocation of water supply benefits in the impact analysis of new facilities, even as a "place holder." Even though additional environmental water is one of the goals of the program, the potential detrimental biological effects of diversion, storage, and re-release of water raises significant issues as to whether new storage is the best option for developing new environmental flows.

Further, we are concerned that this benefits distribution implies allocation of 1/3 of the costs to an environmental purpose. Such a cost allocation would unnecessarily skew the potential cost scenario for new facilities by implying that the general public will pay 1/3 of the costs of any new facilities (given that the Program generally assumes environmental goals to be "public goods" paid for by the public).

Ecosystem Restoration Program Plan

We are currently reviewing the entire ERPP and will provide detailed comments and suggestions in the time frame set for that review. At this time, we will highlight only one issue which is central to the effectiveness of the Ecosystem Restoration Program. We are concerned that the ERPP has not set Delta flow targets for critical years, only for dry, normal, and above normal years. We believe that CALFED needs to place

higher priority on flow protection during critical periods.

In response to this issue, your staff has explained that trying to provide critical year protection "would result in redirecting impacts in critical years unless the ERPP were to acquire a very substantial amount of additional storage dedicated especially for that purpose." We believe that this situation underscores the importance of developing options to implement target environmental flows, beyond simply depending upon yield from new facilities. This further emphasizes the need for a strong Water use Efficiency Program, as discussed earlier. We believe that the discussion underway in the "Toolbox Group" formed to evaluate implementation of the CVPIA provides a good example of the creative planning that could be used to identify critical year water supplies.

We have previously suggested modeling operation of the storage facilities with respect to providing better environmental conditions for drier periods. While we recognize that some post-processing analysis has been done for this purpose, full model analysis using ERPP environmental water supply demands (including critical year demands) is also necessary. This, in turn, can be coupled with other measures (not necessarily reliance on water from new facilities) to meet flow targets in wetter periods. Assuming that targets for all periods should be met from storage ignores the wider range of options available to CALFED.

Water Quality Common Program

As stated in our June 18 letter, we still believe that the suite of Action Strategies that comprises the Water Quality Common Program needs to be reworked both to provide more context about the priority water quality problems to be addressed and to strengthen the program. The individual actions should be framed by problem statements that highlight the problems (including the severity and geographic extent of the problem) and provide a linkage between the various actions targeting different sources. The problem statements and actions should be stated as broadly as possible, so as not to limit the range of solutions or methods - both regulatory and voluntary in nature - to address the problem. The program should also provide a more complete description of current programs and activities to address the problems, and identify how the CALFED program will complement or supplement existing efforts. In addition, the program needs to identify critical data gaps and limitations that currently hamper our ability to address key problems.

Taking this approach a step further, we propose transforming the Action Strategies into an implementation plan (or developing an implementation plan to supplement the Action Strategies) that provides greater specificity on actions, relative priorities, how the common program will supplement existing efforts, funding commitments, and responsible agencies or entities. Although this may go beyond the

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programmatic level of detail, we believe this type of information will be necessary to provide assurances for both the agencies and the stakeholders that water quality issues will be satisfactorily addressed through this program.

We have attached the most recent version of an interagency effort to articulate problem statements to frame the assortment of actions contained in Appendix B of the Phase II report. This is a work-in-progress and we welcome the opportunity to collaborate with your staff on this effort to enhance the water quality program. (Attachment A)

Drinking water quality. CALFED's draft Water Quality Component Report must reflect a clearer and more complete understanding of the rulemaking process specified by the Safe Drinking Water Act for the drinking water contaminants of greatest concern in the Bay-Delta. The Safe Drinking Water Act Amendments (SDWAA) of 1996 directed EPA to undertake a comprehensive program of research and data collection as necessary prerequisites before EPA could begin a required, negotiated rulemaking for long-term controls on microbial contaminants and disinfection byproducts (M/DBP). This statutorily-mandated course of action was advocated by and has the full participation of the drinking water community, including the California Urban Water Agencies (CUWA) members. We strongly believe that it would be unacceptably prejudicial to the rulemaking process directed by the SDWAA for EPA to participate in developing or endorse any CALFED alternative whose provisions for drinking water quality reflect or incorporate any assumptions about specific future outcomes or technological responses for the long-term M/DBP rulemaking.

We are particularly concerned with the "action", "method", "performance targets", and "indicators of success" on page 7-13 of the Draft Water Quality Component Report. We believe the action - "Improve total organic carbon, pathogens, turbidity and bromides at domestic water supply intakes" - could be reached in several ways. However, only a single "method" is given - "Relocate water supply intakes to areas that are not influenced by those discharges." The selection of this single method appears to be driven both by the performance targets, which inappropriately assume a single future regulatory outcome, and by one of the indicators of success: "Existing modern, well-operated treatment plans can successfully and reliably meet current and future drinking water standards without the need to significantly upgrade facilities." In conjunction, this indicator and method emphasize source replacement, offer a limited role for source water protection, and are inconsistent with CALFED's overall approach of balancing multiple goals. Source replacement would degrade ambient water quality by proposing the diversion of better quality water now left instream. To balance multiple goals, source replacement must be evaluated on its cost-effectiveness and environmental impacts relative to other compliance options, and cannot be the only means to carry out the action. As discussed below, any method and indicator of success cannot be framed in terms of needs for treatment technologies or water quality

to comply with a single, future regulatory outcome, but must be framed to assist generally in compliance with multiple future outcomes, consistent with the CALFED Purpose Statement.

We believe that the Purpose and Need Statement approved by the CALFED Policy Group included a proper articulation of the goals for the drinking water quality program component. The Purpose is to "[i]mprove the reliability and quality of raw water for drinking water needs"; the Need lies in "[t]he potential for increasingly stringent drinking water requirements to require new treatment technologies is spurring water providers to seek higher quality source waters and to address pollution in source water." The Purpose and Need Statement provides CALFED with ample appropriate methods and indicators to guide the long-term plan's improvements in source water quality for utilities. CALFED should then, through its alternatives analysis, specify a reasonable level of source water quality improvement that would assist in compliance with many future outcomes, not to one regulatory outcome specifically correlated to one level of improvement.

While it remains true that EPA supports the use of the highest quality source waters available, given the forgoing discussion, we believe that the listed target value for bromide is inappropriately stringent for evaluation of CALFED alternatives. We suggest using a range for bromide from 100 to 200 ug/L. Additionally, we recommend that a range for total organic carbon (TOC) be used from 2 to 4 mg/L. Given the likely Stage 1 Disinfectants/ Disinfection Byproduct Rule requirements and current treatment options, water in these quality ranges should generally be able to be treated to meet standards.

Dilution. We disagree with the reasoning to retaining dilution actions as part of the water quality program, as stated in Steve Yeager's August 12 memo to the PCT. If any of the CALFED alternatives cause increased salinity problems in specific areas, then actions to "mitigate" these impacts should be integrated into that particular alternative, not as part of the common program that bridges all alternatives. Further, we disagree that this action should be retained merely because it originated from stakeholder input. We believe the inclusion of these actions is appropriate for CALFED Management Team discussion.

Inaccurate and unclear statements. We are concerned about certain statements in the Draft Water Quality Component Report that are unclear and may be misconstrued by some parties. In particular, there is a section in both the Executive Summary (page E-6) and Section 5 (page 5-1) that discusses how to define what constitutes a problem. This section states "(I)f a parameter is measured against an existing objective, criteria or standard a decision must be made of whether the standard is appropriate, what it is meant to protect, and what level of exceedance is relevant..." We are concerned that this statement could be misconstrued to imply that CALFED is

questioning the appropriateness of water quality standards and that this misconception could provide members of the regulated community to question the State or EPA's authority to enforce standards and seek remediation based upon a violation of these standards. We have attached a memo from Rick Sugarek, EPA's Remedial Project Manager for the Iron Mountain Mine Superfund site that details this concern, and provides corrections and suggestions for other portions of the report as well. (Attachment B) Because of the significant possibility that these statements may be used out-of-context in other proceedings, we are requesting that CALFED correct the statements and reissue this report.

Date gaps. The Draft Water Quality Component Report contains many data and information gaps and some inaccuracies. For example, there are deficiencies in the loadings tables of Section 4. Many are lacking data that are known to exist, but have yet to be incorporated. This must be done before these tables will be of any value in evaluating existing relative source contributions, much less assessing the potential impacts of the various alternatives. Specifically, Table 4-1 for bromide loadings does not contain data for the impacts of seawater intrusion, although such data are available and the concerns for bromate from seawater dominate the Bay Delta drinking water discussions. Similarly, the TOC data in Table 4-9 does not contain loadings from the Delta, although a major argument is that it is the Delta contributions to TOC that need to be mitigated. We assume CALFED staff will be refining and editing the report before its reissuance, and we will provide a mark-up with our corrections and suggested changes.

Regulatory Roles

The August 12 CALFED staff "response to comments" document includes a brief discussion of the role of regulatory programs in the CALFED process. In response to a question about the effort to control selenium and agricultural drainage, the staff made the following statement:

> A founding principle of CALFED was the concept of providing incentives for voluntary, cooperative actions, with reduced emphasis on compulsory approaches. TMDLs, Waste Discharge Requirements, etc., must, necessarily, be a part of the overall picture, but should be employed where voluntary, incentive based efforts are ineffective. While regulatory actions are part of the mix, we emphasize cooperative alternatives over regulatory enforcement.

We are uncertain of the derivation of this broad statement, and are unaware of any CALFED Policy Team decision that established this statement as a "founding principle of CALFED." Rather than risk any misconceptions about the

role of regulatory programs in CALFED Bay Delta Program, we are clarifying our understanding of the relationship between ongoing regulatory programs and the CALFED effort.

EPA supports the flexible implementation of water quality programs, and believes that state-led efforts to develop innovative approaches to watershed protection are the best way to assure that protection efforts respond to particular local issues and take advantage of particular local planning and regulatory expertise. In Region IX, for example, EPA was instrumental in developing and supporting the recent framework for the Grasslands Bypass Project in the San Joaquin Valley. In that project, stakeholders and regulatory agencies created an innovative program that makes use of economic incentive fees in conjunction with identified load reduction targets to attain water quality objectives in the San Joaquin River. The decisions on how best to attain these targets are being made at the district and grower level.

While EPA actively supports these kinds of innovative approaches to attaining environmental goals, it is incorrect to assume that EPA will always defer to nonregulatory programs. EPA has a defined statutory mission, and in the water quality context this includes participating in the water quality standards program, the NPDES permitting program, the nonpoint source planning program, as well as related grant programs. EPA intends to carry out its mission with a clear focus on what works, on working with the state and local interests to determine which approach in a given context promises the best opportunity for achieving environmental goals. We do not agree that any one approach - voluntary versus mandatory, regulatory versus financial incentives - should receive a preference absent some indication that it will succeed. Similarly, in cases where a regulatory program is being used to implement a goal, EPA believes that vigorous enforcement of that regulatory program is critical.

This issue has broader implications for the CALFED Bay Delta Program. As you know, the Assurances Workgroup is assisting the program staff in developing a package of "assurances" that will assist in the implementation of the final program. The final package will most likely include a mix of regulatory, financial, contractual, and institutional approaches and arrangements to guarantee implementation of the program over the next few decades. It is premature at this stage in the planning process to eliminate or restrict any implementation options. Again, our primary focus must be on what works.

We look forward to working together to address these and the many other issues facing the Bay Delta Program in the immediate future. I think it would be productive to discuss these issues with you and your staff at your earliest convenience.

Sincerely,

Karen Schwinn
Associate Director
Water Division

Enclosures

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